Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

(3)

No. 03-533

IN THE
SUPREME COURT OF THE UNITED STATES

LORI ANN PARR,

Petitioner,

v.

MIDDLE TENNESSEE STATE UNIVERSITY; DONALD CURRY; J.MAIER, Dr.; MICHAEL A. GIBSON; JAMES WALKER, President; C. NATHAN ADAMS,
In their official and individual capacities.

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

Lori Ann Parr
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Antioch, TN 37011
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QUESTIONS PRESENTED

1. Does Congress have the constitutional authority to require states to pay money damages for violations of Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (ADA) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under Title II of the ADA?

2. Does Congress have the constitutional authority to require states to pay money damages for violations of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) §504, et seq., as amended, (Rehabilitation Act) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under the Rehabilitation Act?

3. Does the severability clause of Title IV of the ADA (§ 12213) allow the remaining legal protections and legal remedies of the ADA for discrimination and retaliation of disabled students at State universities to remain enforceable if the accommodations provisions of the ADA are found to be unconstitutional, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing petitioner's claims for lack of subject matter jurisdiction under the ADA?

4. Did the Sixth Circuit err in concluding that all of the Petitioner's claims are violations of equal protection discrimination principles, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction?

5. Did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction, when the petitioner raised claims against the Respondents in their individual capacities under 42 U.S.C. §1983?

LIST OF PARTIES

The Plaintiff-Petitioner in this action is Lori Ann Parr, who is proceeding *pro se*.The Defendants-Respondents in this action are Middle Tennessee State University (Respondent MTSU), Donald Curry (Respondent Curry), Dr. J. Maier (Respondent Maier), Michael A. Gibson (Respondent Gibson), James Walker, former President of MTSU (Respondent Walker), and C. Nathan Adams (Respondent Adams).Pursuant to Supreme Court Rule 29.4(b), Petitioner will serve a copy of this Reply to Respondents' Brief in Opposition on the United States Solicitor General because 28 U.S.C. § 2403(a) may apply.

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Respondent Adams Was Properly Served By The U.S. District Court But Adams Refused Service Of Process By The Court, and Respondents Curry, Maier, Gibson, and Walker Knew They Were Considered Defendants At The Onset Of Petitioner's Case No. 3-98-0865 (*Parr I*) In The U.S District Court 7

REPLY 6:

The State And Its Actors Violated 42 U.S.C. § 1983 By Selective Enforcement Of The Law By Denying The Petitioner's Fundamental State and Federal Right To A Fair and Impartial Hearing Before The Graduate Council 8

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TABLE OF AUTHORITIES

Popovich v. Cuyahoga County Ct.Com. Pl, 276 F. 3d 808 (6th Cir.), cert. denied, 123 S. Ct. 72 (2002).
Romer v. Evans, 116 S. Ct. 1620 (1996)
Stemler v. City of Florence, 126 F.3d 856 (6th Cir. 1997)
United States Dep't of Agric. V. Moreno, 93 S.Ct. 2821 (1973)

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Middle District at Nashville, Tennessee, *Lori Ann Parr v. M.T.S.U., et al.*, No.: 3:98-0865, ***Parr I***, (Middle District, June 18, 2001) is unpublished (P. App. Part B). The opinion of the United States Court of Appeals for the Sixth Circuit, *Lori Ann Parr v. M.T.S.U., et al,* Record No. 02-5925 (Sixth Circuit, May 13, 2003) is unpublished (P. App. Part A). The June 17, 2002 order denying Petitioner's Motion To Amend And/Or Alter Final Judgment And For More Clarity In Final Judgment of the June 18, 2001 final judgment of the U. S. District Court is unreported (P. Reply App. 8), and the order denying the Petitioner's Motion For Leave To Amend Plaintiff's Motion To Alter And/Or Amend Judgment is unreported (P. Reply App. 6)[2]

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on May 13, 2003. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

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[2] Respondents included only partial renditions of these two orders in their Respondents Brief in Opposition. Petitioner has included the full copies in her Appendix to this Reply to Respondents' Brief in Opposition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Americans With Disabilities Act of 1990, Title II & Title IV, 42 U.S.C. 12101, Title II, Part A, §'s 12131 to 12134, Title IV, §'s 12201 to 12213 (ADA) (P. App. Part C.)

Rehabilitation Act of 1973, § 504, as amended through 1998; 42 U.S.C. 2000d-7 (Rehabilitation Act) (P.App. Part C.)

42 U.S.C., § 1983 (P. App. Part C)

STATEMENT OF THE CASE

The Petitioner herein adopts by reference her Statement of the Case in Petitioner's Petition For A Writ of Certiorari To The United States Court of Appeals For The Sixth Circuit, filed in this matter.

ARGUMENT (REPLY)

REPLY 1: Petitioner Notes Her Objection To Respondents' Rewording Of Her Questions Presented

Petitioner notes her objection to the Respondents' rewording of Petitioner's "Questions Presented" in Petitioner's Petition For A Writ of Certiorari To The United States Court of Appeals For The Sixth Circuit.

REPLY 2:

Respondents Have Mislabeled *Parr I* and *Parr II*, and Have Created a New Label "*Parr III*" Not Used By Either

The U.S. District Court Or The Sixth Circuit In The Petitioner's Case

In the U. S. District Court's Order of June 15, 2001, docketed on June 18, 2001 (P. App. Part B.), the District Court states that *Parr I* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.,* No. 3- 98-0865, and states that *Parr II* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.*, Case No. 3-00-0398).[3]

The Sixth Circuit, in keeping with the U. S. District Court's opinion docketed on June 18, 2001, stated that *Parr I* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.,* No.3- 98-0865, and that *Parr II* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.*, Case No. 3-00-0398), as well (P. App. Part A.).

For some reason, the Respondents have stated in their Respondents' Brief In Opposition, that *Parr I* will now refer to the Respondents' interlocutory appeal to the Sixth Circuit, Case No. 98-6701 (R. Brief, p. 4), and that *Parr II* will now refer to Respondents' interlocutory appeal to the Sixth Circuit, Case No. 99-6296 (R. Brief, p. 5). And, Respondents have now labeled Petitioner's only appeal to the Sixth Circuit, Case No. 02-5925, as "*Parr III*," which is a new designation not ever noted in any filing at any time by the Sixth Circuit as a designation for Petitioner's only appeal to the Sixth Circuit, Case No. 02-5925, which is the subject of Petitioner's Petition For Writ Of Certiorari.[4]

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[3] This case was the petition filed by Petitioner in the U. S. District Court against MTSU and Defendant C. Nathan Adams, while the Petitioner's original case – 3-98-0865, was pending in the U. S. District Court. *Parr II* was subsequently consolidated with *Parr I.*

[4] For continuity, Petitioner will not use the Respondents labels, and will use the labels *Parr I* and *Parr II* as defined by the U. S. District Court and

REPLY 3:

Petitioner's Case No. 3-98-0865 (*Parr I*) Was Dismissed In Its Entirety Before The Sixth Circuit Issued PER CURIAM, Unpublished Opinions On Both Of Respondents' Interlocutory Appeals (98-6701 & 99-6296)

On June 18, 2001, the District Court entered its Final Judgment (*sua sponte)* in Petitioner's case into the docket (P. App. Part B.). On June 25, 2001, within the statutory limit, the Petitioner filed a Plaintiff's Motion To Amend And/Or Alter Final Judgment, And For More Clarity In Final Judgment (P. Reply App. 8) with the District Court. On July 24, 2001, Petitioner filed a Plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter And/Or Amend Judgment (P. Reply App.6) with the District Court.

On June 17, 2002, almost a year after Petitioner filed Plaintiff's Motion To Amend And/Or Alter Final Judgment, the District Court entered its Order into the docket denying Petitioner's Plaintiff's Motion To Amend And/Or Alter Final Judgment, And For More Clarity In Final Judgment, and dismissed Petitioner's case in its entirety with its Order (R. App.4). On June 17, 2002, almost a year after Petitioner filed her Plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter And/Or Amend Judgment, the District Court entered an Order into the docket denying Petitioner Leave to Amend her Motion To Alter And/Or Amend Judgment (R. App. 2) also noting that the case was dismissed.

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the Sixth Circuit , and will refrain from referring to her only appeal to the Sixth Circuit as "*Parr III*", and will instead refer to her only appeal to the Sixth Circuit as Case No. 02-5925, as noted in Petitioner's filings with the Court.

On July 12, 2002, within the statutory time limit, the Petitioner timely filed a Notice of Appeal of her case, Case No. 3:98-0865 (*Parr I*)[5], this being Petitioner's only appeal in the matter. The Petitioner's Notice of Appeal clearly stated that she was appealing the FINAL JUDGMENT [6]/By Order dismissing case for lack of subject matter jurisdiction[7] (R. App. 75).

On July 16, 2002, after the case was dismissed in its entirety, and four days after the Petitioner filed her Notice of Appeal, the Sixth Circuit entered a PER CURIAM, unpublished opinion, post-dismissal of Petitioner's Case No. 3:98-0865 (*Parr I*), concerning the Respondent's interlocutory appeal Sixth Circuit Case No. 98-6701[8] (R. App. 5).

On December 30, 2002, over five months after petitioner filed her Notice of Appeal, the Sixth Circuit entered a PER CURIAM, unpublished opinion, post-dismissal of Petitioner's Case No. 3:98-0865 (*Parr I*), concerning the Respondent's interlocutory appeal to the Sixth Circuit, Case No. 99-6296[9] (R. App. 13).

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[5] *Parr II* had previously been consolidated into *Parr I*, as stated prior.

[6] Entered by the Court on June 18, 2001

[7] Both Orders entered by the Court on June 17,2002 dismissed Petitioner's case, Case No. 3:98-0865 (*Parr* I) in its entirety.

[8] Although the Respondents' designate this interlocutory appeal as *Parr I*, it has never been designated as such by either the District Court or the Sixth Circuit.

[9] Although Respondents' designate this interlocutory appeal as *Parr II*, it has never been designated as such by either the District Court or the Sixth Circuit.

REPLY 4:

Petitioner's Rehabilitation Act Claims Are Properly Before The Court.

Petitioner's Amended Complaint, filed with the District Court on March 28, 2001, over a year before the dismissal of Petitioner's case in its entirety by the District Court on June 17,2002, denoted that the Petitioner was seeking relief under the Rehabilitation Act (R. App. 57). Additionally, on Petitioner's Statement of the Issues filed with Petitioner's Notice of Appeal (R. App. 77) Petitioner clearly states that she was presenting the issue of the Rehabilitation Act on appeal to the Sixth Circuit. The Sixth Circuit noted in its Order dismissing Petitioner's Sixth Circuit Case No. 02-5925 that the Petitioner was appealing a district court order dismissing her case under the ADA and the Rehabilitation Act (P. App. Part A.).

Additionally, in the District Court's final judgment in the Petitioner's Case No. 3:98-0865 (*Parr I*), on June 18, 2001, the District Court noted "In its ruling, the Sixth Circuit in Popovich noted that Title II of the ADA is an extension of the Rehabilitation Act of 1973 that would be covered by its Eleventh Amendment ruling. 227 F.2d at 640." (P. App. Part B), seeming to note the Sixth Circuit's stand on the Rehabilitation Act would be the same as its rulings on the ADA in regards to Eleventh Amendment issues. This ruling by the District Court occurred prior to the rehearing *en banc* of Popovich, resulting in the second *Popovich* ruling, *Popovich v. Cuyahoga County Ct. Com. Pl.*, in 2002.

While the Petitioner's Motion to Amend And/or Alter was pending in the District Court, the Sixth Circuit reheard the *Popovich* case *en banc*. Since the Sixth Circuit deemed part

of the ADA (and presumably the Rehabilitation Act) to be valid, based upon the issue of due process, of which the Petitioner believed due process issues were involved in her case, among other issues, Petitioner proceeded with her appeal to the Sixth Circuit after the Sixth Circuit's second ruling in *Popovich, Popovich v. Cuyahoga County Ct. Com. Pl.*, in 2002, after the District Court denied the Petitioner's Motion To Amend and/or Alter on June 17, 2002.

REPLY 5:

Respondent Adams Was Properly Served By The U.S. District Court But Refused Service Of Process By The Court, and Respondents Curry, Maier, Gibson, and Walker Knew That They Were Considered Defendants At The Onset Of Petitioner's Case No. 3-98-0865 (*Parr I*)

Respondent Adams was served in both his individual and official capacities by the U. S. District Court, after the U. S. District Court adopted the Magistrate's Report and Recommendation to consolidate Petitioner's second Complaint filed against MTSU and C. Nathan Adams (3:00-0398) (*Parr II*) (R. App. L 37-45) with Petitioner's first Complaint filed in the U. S. District Court (3:98-0865)(*Parr I*), but Respondent Adams refused service of process by the District Court as noted by the District Court in its Docket Sheet: R:103, Return of Service unexecuted upon Dr. C. Nathan Adams - attempted – "unclaimed" "return to sender" stamped on envelope (Assoc. Case # 3:00-98), entry date 9-25-00 (P. Reply App. 1).[10] Additionally, Petitioner filed her Notice of Corrections properly listing Respondent Adams as a named Defendant at the Sixth Circuit, as per Federal Rules of Civil

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[10] However, it appears Respondents' attorney has continued to represent Respondent Adams in both his capacities in the U. S. Sixth Circuit and U.S. Supreme Court.

Procedure Civ. Rule 60(a) allowing corrections before the case is docketed in the appellate court (P.Reply App.3)

Respondents state that "Because these four MTSU officials/employees were not named as Defendants in the Complaint, the district court's December 16, 1998, order was the first indication these four people had that Plaintiff's Complaint was being construed to name them as Defendants. (R. Brief P.5).The Petitioner issued a separate summons each for Curry, Maier, Walker, and Gibson on September 25, 1998, seven days after Petitioner filed her initial Complaint with the Court in September 18, 1998 (R. App. 19). These individual summonses were docketed by the District court docket as R:2; R:4; R:5,R:6, and process was completed upon Curry, Maier, Walker, and Gibson, as docketed by the District Court docket as R:11; R12; R13; R14 (P. Reply App. 1). Curry, Maier, Walker, and Gibson were all employees of defendant-appellee MTSU, and the caption on the Complaint they were individually served with stated "(and employees, agents, and representatives therein) (R.App. 19). Additionally, the Summonses issued by the U. S. District Court to Curry, Maier, Walker, and Gibson clearly identified them as defendants in the case. It is unclear how the Respondents could not have understood they were being named as defendants in the case – especially considering the level of education the Respondents have - when they were served with a Summons that clearly identified them as a defendant, and clearly stated in writing that they were a defendant in the case.

REPLY 6:

The State And Its Actors Violated 42 U.S.C. § 1983 By Selective Enforcement Of The Law By Denying The Petitioner's Fundamental State and Federal Right To A Fair and Impartial Hearing Before The Graduate Council

Petitioner properly raised the issue of 42 U.S.C. § 1983 in both her petition to the District Court (R. App. 57), and in Petitioner's Statement of the Issues to the Sixth Circuit (R. App. 80, Part IV & V). As stated by the Sixth Circuit in *Stemler v. City of Florence* 126 F. 3d 873, 874 (6th Cir. 1997), citing this Court's ruling in *United States Dep't of Agric. V. Moreno*, 93 S.Ct. 2821, and *Romer v. Evans*, 116 S. Ct. 1620 "If the constitutional conception of equal protection of the laws means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest" [and] "[t]he principle would be the same if Stemler had been arrested discriminatorily based upon her hair color, her college bumper sticker (perhaps supporting an out-of-state rival) or her affiliation with a disfavored sorority or company" [and] "the defendants violated the core principle of the Equal Protection Clause by choosing to exercise the power of the state against Stemler solely for the reason that they disapproved of her perceived sexual orientation."

The Respondents in Petitioner's case not only perceived that the Petitioner had disabilities and was a member of a group commonly referred to as "the disabled" who have been commonly known to be recipients of animus from others, but Respondents absolutely knew Petitioner was a member of such group since the Respondents had been retaliating and discriminating against Petitioner for years for filing a disability-related complaint against the ACIS department in 1994, with copy to Respondent Walker, the former president of the university. Respondent Walker was continuously sent copies of the written correspondence documenting the discrimination and retaliation Petitioner was experiencing in the appeal of her comprehensive examination in which the

Respondents were exercising the state powers they enjoyed as state officials to deprive the Petitioner of her fundamental right under both state and federal law to a fair and impartial hearing through their retaliatory and discriminatory acts and omissions of acts, under color of state law, in violation of 42 U.S.C. § 1983, as described in Petitioner's Complaint (R. App. 56-71). Respondent Walker continuously ignored the correspondence and allowed the remaining Respondents to continue on in their discriminatory and retaliatory acts and omissions of acts. As stated by the Sixth Circuit in Stemler, cited above, "it will often be difficult to find a rational basis for a truly discriminatory application of a neutral law." It is common knowledge that the right to a fair and impartial hearing is a neutral law, and the Record in the Petitioner's case documents that there was no rational basis for the Repondents' acts and omissions of acts whose intent was to deprive the Petitioner of a fair and impartial hearing.

Respectfully submitted,

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No. 02-5925
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LORI ANN PARR)
Plaintiff-Appellant)
)
v.)
)
)
MIDDLE TENNESSEE STATE)
UNIVERSITY; DONALD CURRY;)
J MAIER, Dr.; MICHAEL A.)
GIBSON; JAMES WALKER,)
President; DR. C.NATHAN ADAMS)
Defendant-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

REPLY BRIEF OF THE PLAINTIFF-APPELLANT

I. In reply to defendant-appellees' statements on page 4, part B, of their Brief of the Defendant/Appellees in which it is stated "Because these four officials/employees were not named as Defendants in the Complaint, the district court's December 16, 1998 Order was the first these four people learned that the district court was construing Plaintiff's Complaint to name them as Defendants." Parr replies that Parr issued a separate summons each for Curry, Maier, Walker, and Gibson on September 25, 1998 (R:2; R:4; R:5,R:6,

Summonses),and process was completed (R:11; R12; R13; R14), Curry, Maier, Walker, and Gibson all being employees of defendant-appellee MTSU, clearly identifying them as defendants in the matter as employees of defendant-appellee MTSU as cited in the caption.

II. In reply to defendant-appellees' statements in part C, on page 7 that "Magistrate Judge Brown recommended that some of Plaintiff's claims should survive a frivolity review", Parr agrees that those portions that survived the frivolity review were consolidated into the instant case, as noted in the Magistrate's Report and Recommendation cited by the defendant-appellees on page 7.

III. In reply to defendant-appellees' statements in footnote 4, on page 7, in which it is claimed that defendant-appellee Adams was not served process in his individual capacity, Parr replies that Adams was served in both his individual and official capacity by the District Court, but Adams refused service of process by the District Court (R:103, Return of Service unexecuted upon Dr. C. Nathan Adams –attempted – "unclaimed" "return to sender" stamped on envelope (Assoc. Case # 3:00-98), entry date 9-25-00).

IV. In reply to defendant-appellees' footnote 5, page 7, Parr recognized to the Court that she made a clerical

error on her Notice of Appeal in not handwriting defendant-appellee Adams' name in the caption of her Notice of Appeal, and Parr promptly filed a Notice of Corrections with the District Court (R:125, Notice of Corrections, filed on 7-22-02, and entered on 7-24-02) correcting her clerical error in compliance with Federal Rules of Civil Procedure (F.R.C.P.) Civ. Rule 60(a) allowing corrections before the case is docketed in the appellate court, the instant case being docketed in the appellate court on July 25, 2002 (See Attached Exhibit 1, Docketing Notice, 6th Circuit, dated July 25, 2002).

V. In reply to defendant-appellees' statements in their Summary of Argument, page 10 in which it is stated "Because Plaintiff did not include the district court's June 18, 2001, Order in her Notice of Appeal, Plaintiff has not appealed the district court's dismissal of her Rehab Act claims", Parr states that F.R.C.P. App. R. 4 (a)(1) only allows Parr to appeal the final judgment/order disposing of the case. The final Judgment/Orders disposing of the case entered on June 17, 2002 (R:120/121). Additionally, Parr attached to the pre-printed Notice of Appeal provided by the Court for appeals, the Statement of the Issues stating the issues that she was raising on appeal (R:122, Notice of Appeal/Statement of the Issues) since there was no room on the pre-printed Notice of Appeal to include the issues, said Statement of the Issues attached to Parr's Notice of Appeal including, among other issues, the Rehabilitation Act. Additionally, plaintiff raised the issue of the Rehabilitation Act in her Amended Complaint (R:109).

In reply to these above-stated and remaining arguments of the defendent-appellees in their Brief of the Defendant-Appellees, Parr again must rely on Federal Rules of Civil Procedure, Rule 12(b)(6), 28 U.S.C.A., Motions To Dismiss, Rule 12:

"Complaint should not be dismissed for failure to state a claim because it does not state all of the elements giving rise to a legal basis of recovery or because plaintiff misconceived the proper legal theory or claim if plaintiff is entitled to relief under any theory." P.955, *Scarborough v. Brown Group*; 935 F Supp. 954 (WD Tenn 1995) F.R.C.P. Rule 12 (b)96), 28 U.S.C.A. Motions to Dismiss, Rule 12.

Respectfully submitted,

/s/ Lori Ann Parr
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EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
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Filed: July 25, 2002

Lori Ann Parr
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Nashville, TN 37222-1854

RE: Case No. 02-5925
Parr v. Middle TN St Univ
District Court No. 98-00865

Your appeal has been docketed today as case number 02-5925. The case number and official caption, as it appears on the enclosure, must be on all documents submitted for filing in this case.

The Court's review of the case will be based upon the record of district court proceedings and the briefs filed by the parties. Your brief should explain to the Court the facts of the case, the issues of law which you feel entitle you to relief, and should state the relief which you are seeking. Enclosed you will find a form to be used to present your case in your own words, as clearly as you can. The Court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case.

Appellant's Brief: Signed original & 6 copies
(See attached Pro Se Brief Forms)
Maximum Length: 30 Pages
Due 8/22/02

Appellee's Brief: Signed original & 6 Copies
Red Cover
Maximum Length: See Rule 32
For page or type – volume
Limitations
Due 9/19/02

Appellant's Reply Brief: Signed original & 6 Copies

	Gray Cover Due 10/3/02
Joint Appendix or: Photocopies of Record	5 Copies of Joint Appendix or 4 Copies of Record White Cover Due 10/10/02

Appellant's failure to file a brief or joint appendix by the established due dates may result in the dismissal of the case.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY, et al. Defendants.	)	JUDGE HAYNES

PLAINTIFF'S MOTION FOR LEAVE TO AMEND PLAINTIFF'S MOTION TO ALTER AND/OR AMEND JUDGMENT (Filed July 24, 2001)

Comes now the plaintiff before this Honorable Court with her Motion and would respectfully request of this Honorable Court that the Court would grant to plaintiff leave to amend Plaintiff's Motion To Alter and/or Amend entered on June 26, 2001 [115-1], for the following reasons:

1. Plaintiff has come into receipt of knowledge, post-filing of her Motion To Amend and/or Alter, (See attached Docket Summary from the U.S. Court of Appeals For the Sixth Circuit, *Popovich v. Cuyahoga Cnty Court, et al.*, #98-4100, Attachment 1), that the *Popovich* case

has been resubmitted to the U.S. Court of Appeals For the Sixth Circuit, for re-hearing en banc, and that such case was argued June 6, 2001 on the issues of Title II and Title III of the Americans With Disabilities Act – which were, in part, the basis of the Court's final judgment in this matter – and that the U. S. Court of Appeals For the Sixth Circuit has not issued a final ruling in *Popovich*, on these issues.

Therefore, the plaintiff would ask the Court for leave to amend her Motion to Amend and/or Alter to request the Court to reconsider its final judgment until the final outcome of *Popovich.*

Respectfully requested,

/s/ Lori Ann Parr

Lori Ann Parr
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Box 111854
Nashville, TN 37222-1854
615-333-7567

CERTIFICIATE OF SERVICE

I swear and affirm that a copy of this plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter and/or Amend was mailed certified, certification number 70000600002472859493 to Ms. Mary Collier, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this the 23rd day of July, 2001.

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 6-17-02 By gi

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR	)	
Plaintiff	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE	)	JUDGE HAYNES
STATE UNIVERSITY, et al.	)	
Defendants.	)	

PLAINTIFF'S MOTION TO AMEND AND/OR ALTER FINAL JUDGMENT, AND FOR MORE CLARITY IN FINAL JUDGMENT
(Filed June 25, 2001)

Comes now the plaintiff before this Honorable Court with her Motion and would respectfully request of this Honorable Court that the Court would alter and/or amend it final judgment, and provide more clarity of the final judgment, as follows:

1. The Court stated in its Order "Plaintiff's claims in both actions arise out of the defendants alleged failures to make reasonable accommodations for her to complete a master degree program, including on the taking of the comprehensive examination." In response to this statement by the Court, the plaintiff would show:

A.) The plaintiff stated in her Complaint on pages 5, 6, and 11, that the actions of plaintiff's Complaint were actions arising from acts and omissions of acts that occurred within the one-year statutory time limit prior to the filing of the plaintiff's initial Complaint, *Parr I* (3:98-0865), as indicated on page 11 of plaintiff's Amended Complaint, entitled "Part B. Discriminatory Acts That Occurred Within The One-Year Statute", and acts occurring within the one

year statute of the plaintiff's second Complaint, *Parr II* (300-0398), that plaintiff has filed with the Court. All other acts, and omissions of acts, including the plaintiff's request for an accommodation and subsequent denial of such request in October 1994 (which occurred some four years prior to the plaintiff's initial filing with the Court), were listed and described only as predicate acts – as required by federal evidentiary law – to show a long-term pattern of discrimination, abuse, and retaliation by the defendants, and those acts occurring outside of the one-year statute were not the actions of which plaintiff's Complaint arose. Only those actions listed in Part B. Discriminatory Acts That Occurred Within The One-Year Statute (*Parr I*), and those listed in plaintiff's second Complaint (*Parr II*), both consolidated into Plaintiff's Amended Complaint, are the causes of action of the Plaintiff's Complaint.

B.) The Court states in its Order "Plaintiff also alleges retaliation for her requests for accommodations under the ADA". Plaintiff did not state in her Complaint that she was retaliated against for requesting accommodations. Plaintiff stated that she was retaliated against for the numerous complaints she has filed and the actions she has taken, over a period of some 6 years, in her attempts to protect and defend herself from the defendants, both within the university and in federal court, for the abuse and discrimination that the defendants have inflicted upon the plaintiff for numerous and various reasons listed separately and specifically in the plaintiff's Complaint.

C.) The plaintiff at no time in any Complaint with the Court stated that an accommodation was requested at the comprehensive examination. Plaintiff made no request for an accommodation at the comprehensive examination.

The plaintiff would respectfully request the Court to reflect

these facts, listed above in Part 1, A., B, and C., in its final judgment

2. It is unclear to the plaintiff who the Court is referring to as "Davis" in its second paragraph on page 2 of its Order of June 15, 2001, and would ask the Court to identify this person to the plaintiff, and to what meaning they are incorporated into the Court's final judgment.

Respectfully requested,

/s/ Lori Ann Parr
Lori Ann Parr
825 South Church St.
Box 2262
Murfreesboro, TN 37130
615-333-7567

CERTIFICIATE OF SERVICE

I swear and affirm that a copy of this plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter and/or Amend was mailed certified, certification number _____[1] to Ms. Mary Collier, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this the 22n[rd] day of July, 2001.

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 6-17-02 By gi

[1] Proof of service was filed with the District Court